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COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

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December 31, 2002

TO: Each Supervisor

FROM: James A. Noyes
Director of Public Works

**ITEM 77, SYNOPSIS 112, ON THE DECEMBER 17, 2002, BOARD AGENDA
PLACEMENT OF BUS SHELTERS, BENCHES,
AND TRASH RECEPTACLES AT VARIOUS LOCATIONS
PROTEST OF AWARD TO LNI CUSTOM MANUFACTURING, INC.**

At the December 17, 2002 meeting, Matthew Hollister and Patrick Merrick, representing Solar Outdoor Lighting, Inc., and Tolar Manufacturing, Inc., respectively, protested the award of the subject contract to the lowest bidder, LNI Custom Manufacturing, Inc. Tolar manufactures bus shelters and Solar provides solar panels for the bus shelters which provide power for the electrical lights on the shelters. Solar and Tolar are subcontractors to Vido Samarzich, Inc., the second low bidder. After they presented their concerns, your Board continued the Item until the January 7 meeting to allow us to investigate the protest and brief the Board before the next meeting.

Recommendation

Following consultation with County Counsel, we believe that the protests are without merit and recommend that the Board proceed with the award to LNI.

Background

Since opening bids on this project, three issues related to the bid submitted by LNI have been raised by Vido Samarzich, Inc. and its subcontractors.

LNI's Contractors License

Our recommendation to award the subject project to LNI appeared first on the December 10, 2002, Board agenda. However, I requested that this item be continued one week until the December 17 meeting to investigate Mr. Samarzich's original protest of the award to LNI. Initially, Mr. Samarzich contended that because LNI did not possess the proper contractors license at the time bids were submitted, LNI's bid should be rejected. However, this project includes Federal funds, and Federal regulations specify that the low bidder cannot be required to have the proper license until the time of award. In addition, the Instructions to Bidders, included in the request for bids, clearly state that this is the case.

At the time of bid, LNI did not possess the required contractors license. Upon being advised of this, LNI applied for the proper license, successfully completed the required examination, and was issued the appropriate license by the State Contractors Licensing Board on December 2, 2002. Because LNI had the required license at the time of award, Mr. Samarzich's protest was without merit.

Proper Signatures on LNI's Bid Proposal

After being advised that LNI had been granted the appropriate license, on December 9, 2002, Mr. Samarzich submitted another protest stating that the individual who signed several of LNI's bid documents is an executive account manager and not an officer of the company. While this is true, the president of LNI informed us that the manager in question was authorized and indeed routinely signs such documents, including contracts, on behalf of the company. In addition, the company president signed several of the bid documents including the bid bond, which indicates the company officers were fully aware the bid was being submitted. Importantly, if LNI attempted to withdraw its bid, something LNI does not intend to do, the County is protected by the bid bond.

In addition, to eliminate any doubt regarding their willingness to carry out the contract, on December 12, 2002, LNI submitted a properly signed and notarized contract as requested by the Department. LNI understands that the bid is not considered as binding upon the County until the project is awarded by your Board and the contract is fully executed. Following the December 17 meeting, we met with Mr. Samarzich. Although we explained our position to Mr. Samarzich, he did not agree.

Tolar's Warning of Possible Infringement and Quality Control of Other Bus Shelter Designs

On December 16, 2002, we received a letter from a law firm representing Tolar warning the County that LNI and the County might be infringing on Tolar's bus shelter design. Tolar's lawyer noted that the project specifications call out for the use of the Tolar bus shelter design. What he failed to mention, however, is that the specifications also allow for the use of an approved equal as required by the California Public Contract Code. He argues that if LNI does not subcontract with Tolar to provide the bus shelters, then LNI and the County will have infringed on the Tolar design. It is very common for specifications to reference a specific company's product but allow for an equivalent product to be used. It is incumbent on the prime contractor to make sure that, if they do not use the specified product, they use a non-infringing equivalent product.

We do not know whether LNI intends to provide bus shelters purchased from Tolar or from some other source because the contractor's technical submittals are not required until after the contract is awarded. Because LNI manufactures bus shelters, it is possible and maybe probable that LNI intends on providing bus shelters that they make. If so, LNI will be contractually and legally obligated to provide bus shelters that do not infringe on any other manufacturer's rights and meet the performance requirements of the specifications.

In addition, Mr. Merrick of Tolar asserted at the December 17 meeting that previously installed LNI bus shelters are susceptible to rust. We took that into consideration when preparing the performance specifications and require that the shelters, benches, and trash receptacles be coated with a baked polyurethane coating.

If you have any further questions, please contact me or your staff may call Gary J. Hartley at (626) 458-4016.

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cc: Chief Administrative Office
County Counsel
Executive Office